

D-1-GV-09-002014

Filed
09 November 2 P3:33
Amalia Rodriguez-Mendoza
District Clerk
Travis District

NO. _____

STATE OF TEXAS,
Plaintiff,

v.

TRACY L. LONG,
Defendant.

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

STATE OF TEXAS'S ORIGINAL PETITION,
APPLICATION FOR INJUNCTION,
REQUEST FOR DISCLOSURE,
FIRST SET OF INTERROGATORIES, AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

The State of Texas, Plaintiff, ("the State") files this suit against Tracy L. Long, Defendant.

The State brings this lawsuit to enforce laws that regulate subdivision land sales to restrict the development of unsanitary residential areas sometimes referred to as "colonias." This lawsuit seeks injunctive relief, civil penalties, attorney's fees, and court costs.

1.

Discovery Control Plan

1.1. The State intends to conduct discovery under Tex. R. Civ. P. 190, Level 2.

2.

Parties and Service

2.1. The State of Texas is authorized to bring this suit through its Attorney General pursuant to Texas Local Government Code section 232.037 and Texas Water Code sections 16.353, 16.354.

2.2. Defendant Tracy L. Long is a natural person residing in Nueces County, and may be served with process at 419 Schatzel Street, Corpus Christi, Texas 78401, or wherever he may be found.

3.

Jurisdiction and Venue

3.1. This Court has jurisdiction and venue over this suit pursuant to Texas Local Government Code sections 232.035(f), 232.037(a), (d) and Texas Water Code sections 16.353, 16.3545(3).

4.

Residential Subdivision Regulation

4.1. Texas Local Government Code, Chapter 232, Subchapter B ("Subchapter B") regulates the subdivision and sale of residential land in counties within designated proximity to the Texas-Mexico border. Nueces County has been one of these counties since September 1, 2005, pursuant to Texas Local Government Code section 232.022(a)(2).¹

4.2. Subchapter B applies to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of a county.² "In the jurisdiction of the county," for purposes of Subchapter B, is land outside the corporate limits of any municipality and also outside the extraterritorial jurisdiction of any municipality that has entered into an inter-local agreement with the county to allow the municipality to regulate subdivision plats within its extraterritorial jurisdiction.³ The land at issue in this lawsuit is in the jurisdiction of Nueces County, within the

¹ Texas Local Government Code section 232.022(a) provides: "This subchapter applies only to (1) a county any part of which is located within 50 miles of an international border; or (2) a county: (A) any part of which is located within 100 miles of an international border; (B) that contains the majority of the area of a municipality with a population of more than 250,000; and (C) to which Subdivision (1) does not apply." Section 232.022(a)(2) was added by S.B. 425; Acts 2005, 79th Leg., ch. 708, § 2, eff. Sept. 1, 2005.

² Tex. Local Gov't Code § 232.022(b).

³ Tex. Local Gov't Code § 232.022(c), (c-1).

meaning of Subchapter B, since such land lies outside the extraterritorial jurisdiction of Corpus Christi, which is the only municipality in Nueces County with the described inter-local agreement.

4.3. Under Subchapter B, residential lots must have water and wastewater facilities that meet minimum state standards before the lots may be sold. If these facilities are not already installed, their installation must be financially guaranteed.⁴

4.4. The minimum state standards for water and wastewater facilities are established by the Texas Water Development Board pursuant to Texas Water Code section 16.343. For water supply, minimum state standards require that lots either be provided with piped water from a centralized water system or with individual water wells meeting certain standards.⁵ For wastewater disposal, minimum state standards require that lots either be provided with piped sewer service from an organized sewerage facility or that wastewater disposal be provided by a proper, individual on-site sewage facility (e.g., a septic system).⁶

4.5. If a subdivision lot lacks the minimum state standard water and wastewater services, it may not be sold in that condition. For such a lot to be sold, these services must first be installed or else the lot must be platted or replatted to provide such services.⁷ A purpose of this restriction is to deter growth within existing—but substandard—residential subdivisions.

⁴ Tex. Local Gov't Code §§ 232.023, .027, .040.

⁵ 31 Tex. Admin. Code § 364.32.

⁶ 31 Tex. Admin. Code § 364.33.

⁷ Tex. Local Gov't Code § 232.040(b). Excepted from this sales prohibition is a seller, other than a subdivider or the subdivider's agent, who resides on the lot. *Id.* at § 232.040(c).

5.
Defendant's Violations of Subchapter B

5.1. Defendant Tracy L. Long owns and sells lots in a residential subdivision situated in Nueces County, Texas, generally west of the City of Corpus Christi. Named Sweet Water Estates, the subdivision is located on State Highway 44, north of the community of Banquete, and is bordered by County Roads 91 and 93.

5.2. Sweet Water Estates lies outside the corporate limits of any municipality and outside the extraterritorial jurisdiction of the City of Corpus Christi, the only municipality in Nueces County that has entered into a section 242.001 inter-local agreement with the county to regulate subdivisions in the city's extraterritorial jurisdiction.⁸

5.3. Sweet Water Estates contains 64 individual lots divided into 2 blocks, according to a plat of the subdivision filed in the Nueces County records on November 16, 2000 and recorded at volume 60, page 200.

5.4. Defendant sold lots from Sweet Water Estates as follows:

- On June 15, 2006, Defendant sold lot number 8, block 2, to Erasmo and Lorena Fernandez for \$23,238.77.
- On June 15, 2006, Defendant sold lot number 9, block 1, to Monica Trujillo for \$10,439.90.
- On June 15, 2006, Defendant sold 2 lots, number 21 and 22, block 1, to Sergio Resendez, each for \$14,465.68.
- On June 15, 2006, Defendant sold lot number 15, block 1, to Jose Ramirez for \$23,560.19.
- On June 15, 2006, Defendant sold lot number 24, block 2, and lots number 25 and 26, block 1, to Laura Villareal for \$15,481.55, \$22,912.33, and \$22,920.46, respectively.

⁸ See para. 4.2 above.

- On June 15, 2006, Defendant sold lot number 24, block 1, to Daniel and Noralicia Saldana for \$14,483.38.
- On June 15, 2006, Defendant sold lots number 15 and 16, block 2, to Johnny Resendez, each for \$18,914.15.
- On June 15, 2006, Defendant sold lot number 17, block 2, to Hipolito and Isabel Resendez for \$18,973.56.
- On January 1, 2007, Defendant sold lot number 14, block 1, to Michael Galvan for \$10.00 and other valuable consideration.
- On January 2, 2007, Defendant sold lot number 21, block 2, to Joe Fonseca Jr. and Sylvia Fonseca for \$15,000.00.
- On March 2, 2007, Defendant sold lot number 27, block 2, to Juan J. Rodriguez for \$15,750.00.

5.5. When Defendant sold these lots, the lots lacked minimum state standard water supply and wastewater facilities. Prior to sale, Defendant failed to install such facilities, or, alternatively, failed to replat the lots to install such facilities or to provide the financial assurance for such installation. Accordingly, each of these 15 lot sales violated Texas Local Government Code section 232.040(b).

5.6. Defendant still has not met the Subchapter B requirements with regard to these sold lots. Moreover, Defendant currently owns additional unsold lots in Sweet Water Estates that also lack minimum state standard water and wastewater facilities.

6. Injunction

6.1. Pursuant to Texas Local Government Code sections 232.037 and 232.040(d), the State seeks against Defendant appropriate injunctive orders to prevent new or threatened violations of the sales prohibition and replat requirements of Texas Local Government Code section 232.040(b) and to require appropriate corrective actions for past violations.

6.2. More specifically, the State requests this Court to order appropriate permanent injunctive relief that includes, but is not limited to, orders requiring:

(1) that Defendant cease and refrain from the further selling of land in Sweet Water Estates until such lots are provided with the minimum required water and wastewater services or until the lots are properly replatted to provide such facilities or to financially guarantee such installation;

(2) that Defendant replat or otherwise provide water and wastewater services to lots already sold in violation of Local Government Code section 232.040(b), provide refunds to lot buyers, or accomplish additional or alternative corrective actions as determined appropriate by this Court;

(3) that Defendant cease and refrain from selling or subdividing any land in Nueces County contrary to the requirements and restrictions of Subchapter B; and

(4) such additional injunctive relief as warranted by the facts.

7.

Civil Penalties

7.1. Texas Local Government Code section 232.035(c) provides that a subdivider or agent who violates Subchapter B is subject to a civil penalty of not less than \$500 or more than \$1,000 for each violation. Pursuant to this provision, the State requests that this Court assess a civil penalty within the statutory range for each lot sold in violation of Texas Local Government Code section 232.040(b).

8.
Attorney's Fees and Costs

8.1. The State requests recovery of attorney's fees, investigation costs, and court costs as authorized by Texas Local Government Code sections 232.035(c) and 232.037(a)(3), Texas Water Code section 16.354(6), and Texas Government Code section 402.006(c).

9.
Request for Disclosure

9.1. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose to the State, within 50 days of service of this request, the information and material described in Rule 194.2(a), (b), (c), (e), (f), (i), and (l).

10.
First Set of Interrogatories

10.1. Pursuant to Rule 197 of the Texas Rules of Civil Procedure, Defendant is asked to respond to the following interrogatory within 50 days of service of this request:

Interrogatory No. 1: Identify each conveyance by Defendant, since September 1, 2005, of a lot situated in Sweet Water Estates. Include in your answer the land description (i.e., block and lot numbers); the name of the buyer(s); the date of conveyance; and the method of conveyance (e.g., warranty deed, contract for deed, etc.).

11.
First Request for Production of Documents

11.1. Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Defendant is asked to produce the following documents to the undersigned assistant attorney general within 50 days of service of this request:

A. All documents relating to Defendant's conveyance, since September 1, 2005, of lots situated in Sweet Water Estates.

Prayer for Relief

As specified above, the State of Texas respectfully requests injunctive relief, civil penalties, attorney's fees, costs of investigation, court costs, post-judgment interest at the highest legal rate, and all other relief to which it is entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE
Chief, Environmental Protection and
Administrative Law Division

DAVID PREISTER
Chief, Environmental Protection Section



DANIEL C. WISEMAN
Assistant Attorney General
State Bar No. 24042178
Environmental Protection
& Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Phone: (512) 475-4045
Fax: (512) 320-0911

ATTORNEYS FOR PLAINTIFF
STATE OF TEXAS

STATE OF TEXAS
COUNTY OF NUECES

}
}
}

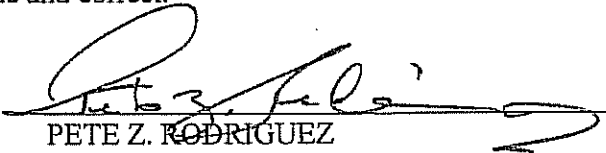
AFFIDAVIT OF PETE Z. RODRIGUEZ

BEFORE ME, the undersigned authority, on this day personally appeared Pete Z. Rodriguez, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

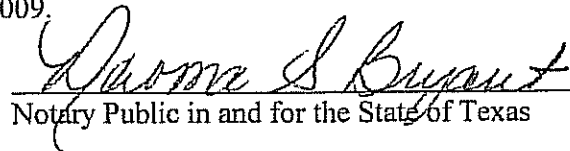
"My name is Pete Z. Rodriguez. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. This affidavit is made on my personal knowledge, and the statements herein are true and correct.

I am an investigator for the State of Texas. My duties include reviewing subdivision plat applications and investigating violations of state and county residential subdivision requirements.

I personally investigated the underlying facts of this lawsuit. I have carefully reviewed the factual allegations in Parts 4 and 5 of the attached *State of Texas's Original Petition, Application for Injunction, Request for Disclosure, First Set of Interrogatories, and First Request for Production of Documents*. The factual allegations are true and correct."


PETE Z. RODRIGUEZ

SWORN TO and SUBSCRIBED before me by PETE Z. RODRIGUEZ on the 7th day
of October, 2009.


Notary Public in and for the State of Texas

My commission expires: 12/09/2010

